

Roger Brooke Taney to Andrew Jackson, June 27, 1836, from Correspondence of Andrew Jackson. Edited by John Spencer Bassett.

ROGER B. TANEY (CHIEF JUSTICE) TO JACKSON.¹

¹ Some time earlier Jackson had a conversation with Chief Justice Taney, who agreed to write out his reasons for opposing a distribution of the surplus. In compliance with this promise Taney sent Jackson his views on June 20, in the shape of a veto message (see p. 404, *ante*). The quick shift in the President's attitude made them useless; for the "deposit act", as it was now euphemistically called, received his approval on June 23, 1836.

Private

Baltimore, June 27, 1836.

My Dear sir, On my return from Delaware where I have been holding court since I saw you, I received your letter and at the same time, one from Major Donelson. In the argument I sent you, you will perceive that it was altogether founded on the position that the Senate's Bill, proposed in effect a *loan* to the States, or an *investment in their stocks*, and not a *deposit* of the money of the U. States in the true and proper sense of the word. The amendment made in the House of Representatives certainly removed that objection, and the states by the bill as it passed are undoubtedly mere depositories and not borrowers of the money; and however objectionable the bill is on the score of policy, yet there is no constitutional difficulty in the way, and no sufficient ground for a veto. And if the amendment of Mr. Anthony,² had been seen by me in time I should have written to you to say so. For you have heretofore confined the veto power to constitutional questions, and in this case particularly which relates entirely to the regulations proper to be made by

Library of Congress

law for the safe keeping of the public money, the responsibility belongs to Congress rather than to the Executive. And as you have often pressed upon Congress the necessity of discharging their duty in this matter, you could not have vetoed the regulations proposed on that subject, passed as they were by such large majorities in both Houses, however objectionable you believed them to be on the score of policy. In the shape in which the bill came to you, I think your decision was undoubtedly right.

2 Joseph B. Anthony, M. C. from Pennsylvania 1833–1837.

The policy of this measure however, and the principle involved in it, appears to me a most unfortunate and mistaken one, and I think those of our friends who have supported it, will soon see their error. If the principle is once acknowledged that Congress may raise a revenue beyond the wants of the General Government, and may deposite the money where they please, either with a state or a corporation, and may suffer that money to remain there to the end of time while they are continuing to raise more to add to it, I see no limitation whatever to the powers of the General Government. For there is no substantial difference between expending the money directly for any purpose that Congress pleases, and expending it indirectly for any purpose Congress pleases by placing it as a deposite with a state or corporation with an understanding that it is never to be recalled. The radical error on the part of our friends is in supposing that the power of taxation may be lawfully exercised so as to continue to collect a revenue beyond the wants of the Government. By continuing to collect a revenue which they admit they cannot employ usefully for the purposes of the General Government, they assert in effect an unlimited power of taxation, and when they get the money it is easy to deposite it, with an understanding that the deposite is never to be recalled. The friends of a strict construction of the powers of the General Government, will I fear find that they have placed themselves in a serious difficulty by supporting this measure in Congress. They will find it impossible to get the money back from the states, for the universal impression is that it is never to be recalled. And if they do not bring it back from the states, they will be compelled to sanction a principle, which is directly at war with that construction of the Federal Constitution for which they

Library of Congress

have been so long contending. For it will be no easy matter to set limits to the powers of a government which may raise what money it pleases, and apply it indirectly to what purposes it pleases, by depositing it with a state or corporation or an individual, with an understanding that it is never to be recalled. I have not seen a single political friend who does not regret the course which has been taken in Congress, while every one admits that in the shape in which the bill came to you and the vast majorities by which it was passed, you were unquestionably right in not vetoing it.

I am truly sorry to find that you have been unwell since I left you. Trusting that you are already recovered, and with cordial wishes for your health and happiness,

I am most respectfully and truly your friend